



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-111 Advances and reimbursements.**

Date last adopted: **May 29, 1970**

Reviewer: **Pat Moses**

Date review completed: **June 29, 2005**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document: This rule explains that amounts received as an advance or reimbursement of amounts expended or to be expended by a taxpayer in payment of costs or fees for a customer or client may be excluded from the measure of tax. The rule defines the terms "advance" and "reimbursement", clarifies the circumstances under which these terms apply, and provides examples.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain. **This rule helps businesses and department staff to understand the exclusion of "advances" and "reimbursements" from gross income. This allows taxpayers to fulfill their tax reporting obligations correctly and helps the department provide for consistent application of tax.**



3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	X	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or



		revising this document?
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Please explain. **The rule is clear. While there is no need to revise this rule at this time, any future revision of the rule should bring the rule up to current standards for formatting and organization.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **The department’s authority to make and publish rules is contained in RCW 82.01.060(2) and RCW 82.32.300.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The department has exclusive authority for making and administering excise tax rules. The subject matter of Rule 111 is specific to Department of Revenue.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
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X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain. **This rule aids taxpayers by giving specific instructions and examples. The rule also promotes consistent and fair application of the related statutes on the part of DOR staff.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

- **RCW 82.04.070 Gross proceeds of sales**
- **RCW 82.04.080 Gross income of the business**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 575.04.111 Loan application deposits**
- **ETA2016.04.111 Professional employer organizations**

Court Decisions:

- **Charles A Pilcher, M.D., v. Dept. of Revenue, Court of Appeals Division II -- Taxpayer contracted to staff a hospital emergency room and hired other doctors to be the staff. Taxpayer was not entitled to exclude those salaries from income as pass-through payments.**

Board of Tax Appeals Decisions (BTAs):

- **Docket 52716, Helga Rebitzer dba Olympia Sheet Metal, Inc., v. Dept. of Revenue -- B&O tax is due on receipts from a union trust fund designed to compensate employers when bidding for a job against non-union competitors.**

Administrative Decisions (e.g., WTDs):

- **19 WTD 9 (2000) -- When a general partner acts as the general contractor on a partnership construction project, the construction laborers under the general partner's payroll are not considered employees loaned to the partnership, and the payments it receives are not considered advances or reimbursements.**



- **19 WTD 94 (2000)** -- An informal understanding between employee-placement consultants that an employer-client is liable for either consultant's portion of a placement fee is not enough to support exclusion under Rule 111.
- **19 WTD 393 (2000)** -- When a public utility receives funds from the Department of Transportation to reimburse it for the costs of moving public utility facilities necessitated by DOT's construction, improvement, or demolition of a state highway, the amount of payment is in lieu of eminent domain proceedings and not subject to either B&O or PUT, provided the amounts received do not include the costs of any improvements to the public utility facilities.
- **19 WTD 410 (2000)** -- A wholesale insurance agent who accepts applications for insurance that come through sub-agents cannot deduct the commissions retained by the subs from the measure of its B&O tax, if the wholesale broker alone has the contractual right to receive the commissions from the insurer.
- **19 WTD 416 (2000)** -- A wholesale insurance broker is taxable on the full amount of the commission paid on insurance it markets even when the retail broker on the transaction collects the gross premium and
- **19 WTD 423 (2000)** -- Because the taxpayer is liable to the manufacturers regardless of whether it receives payment from retailers on drop or direct shipments from the manufacturers to the taxpayer's retail customers, the taxpayer is liable other than as an agent, and the receipts are not excluded from gross income under Rule 111.
- **19 WTD 947 (2000)** -- A foreign corporation/taxpayer providing real property management services was subject to service B&O tax on its gross income without the right to deduct reimbursements it received from the owners for on-site personnel salaries and other expenses. The taxpayer did not meet all requirements of Rule 111 and ETA 90-1.
- **20 WTD 98 (2001)** -- Receipts derived from separately stated insurance charges to growers, who own fruit stored in a warehouse, to cover the fruit packer's premiums for losses to the contents of the warehouse, are not "reimbursements," but taxable under the same classification as the receipts designated as warehouse charges.
- **20 WTD 240 (2001)** -- An agency relationship is created by the conduct between a taxpayer and its client, not by simply stating in contract that the agency relationship exists. Also, merely showing that the taxpayer lacked the technical skills to personally perform the services for which it received payment does not establish the second Rho element (the payments involve services the taxpayer did not or could not render), when the taxpayer contracted to provide the services, and the contract clearly contemplated that it would provide them by hiring or subcontracting personnel with the necessary expertise.
- **20 WTD 471 (2001)** -- When a taxpayer receives funds from its customer to pay a third party for services the taxpayer did not or could not provide and the taxpayer is liable to the third party solely as agent for its customer, the amounts received are



- not considered part of the taxpayer's gross income.
- **20 WTD 481 (2001)** -- All three Rule 111 conditions set out in *Christensen* and *Rho* must be met for a receipt to qualify for pass-through treatment. The taxpayer must claim, as well as carry the burden of showing qualification for, pass-through treatment under Rule 111.
 - **21 WTD 66 (2002)** -- A business that recruits and provides temporary workers to others, and is considered the employer of the workers for excise tax purposes, must classify gross receipts consistent with the procedures set out in ETA 90-001, and must collect and report retail sales tax when appropriate.
 - **21 WTD 90 (2002)** -- Rule 111 pass-through was not allowed where a consultant was hired by clients to provide business consulting services, actually performed some of those consulting services himself, and billed clients in his own name for all consulting services provided.
 - **21 WTD 198 (2002)** -- When a taxpayer receives funds to procure services from a third party for services the taxpayer did not or could not provide and the taxpayer is liable to the third party solely as agent for its customer, the amounts received are not considered part of the taxpayer's gross income.
 - **21 WTD 262 (2002)** -- When a lessor's motor vehicle registration fee is paid by the lessee of the vehicle pursuant to the lease agreement, such payment qualifies as "value proceeding" and "consideration" for the lease and is properly included in the retailing B&O and retail sales tax measure. Such a fee is not an advance or reimbursement because the lessor has primary liability for its payment.
 - **23 WTD 6 (2004)** -- If a taxpayer acts as an agent for an undisclosed principal, then the taxpayer is personally bound to perform any contract entered into for the undisclosed principal as the principal. Therefore, an agent for an undisclosed principal does not qualify for Rule 111 exclusion, because the agent is liable as the principal and not solely as an agent.
 - **23 WTD 90 (2004)** -- A taxpayer that paid for overhead expenses may only exclude amounts billed to and received from affiliates as advance and reimbursements under Rule 111 if the taxpayer contracted for the goods and services solely as agent of the affiliate.
 - **23 WTD 103 (2004)** -- Emergency room physician fees -- simply making a claim of agency in a billing clause of the contract does not qualify for Rule 111 exclusion when the overall contract does not lead to that conclusion / result.
 - **24 WTD 72 (2005)** -- A clinical research coordinator is not entitled to exclude from its gross income under Rule 111 receipts from pharmaceutical companies, which the taxpayer uses to pay physicians for their role in the research, ..., where the three elements of *Rho* are not met.



- **24 WTD 168 (2005) -- A temporary staffing business that is the employer of the temporary workers it provides may not exclude the wages and other labor costs of the temporary workers from its gross income subject to B&O.**
- **24 WTD 201 (2005) -- A temporary staffing business that is the employer of the temporary workers it provides may not exclude the wages and other labor costs of the temporary workers from its gross income subject to B&O.**

Attorney General's Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **None**

10. Review Recommendation:

_____ Amend

_____ Repeal

_____ **X** Leave as is

_____ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

_____ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

This rule is serving its purpose as is.

11. Manager action: Date: 7/6/05

_____ Reviewed recommendation AL Accepted recommendation

_____ Returned for further action

Comments: